

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF MONTANA**

**BILLINGS DIVISION**

**JEFFREY J. LOUT,**

**Petitioner,**

**VS.**

**STATE OF MONTANA,**

### Respondents.

**CV-09-10-BLG-RFC**

**ORDER ADOPTING FINDINGS  
AND RECOMMENDATIONS OF  
U.S. MAGISTRATE JUDGE**

On February 9, 2009, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation (*Doc. 4*) with respect to Lout's "Notice of Appeal and Writ of Supervisory Control for Withdrawal of Guilty Plea from State District Court." Lacking other alternatives, the Clerk of Court filed the documents as a petition for writ of habeas corpus under 28 U.S.C. § 2254. Magistrate Judge Ostby recommends that the petition be dismissed.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, Petitioner filed his Objections and Request for a Hearing on February 24, 2009. Petitioner's objections require this Court to make a *de novo* determination of those

portions of the Findings and Recommendations to which objection is made. 28 U.S.C. § 636(b)(1). Petitioner's objections are not well taken.

After a de novo review, the Court determines the Findings and Recommendation of Magistrate Judge Ostby are well grounded in law and fact and HEREBY ORDERS they be adopted in their entirety.

As Lout has previously been advised, there is no federal writ of supervisory control. *See Order of Dismissal at 1, Lout v. State of Montana, Cause No. CV 08-108-M-DWM (D. Mont. filed Aug. 1, 2008)*. Additionally, "federal district courts have 'no authority to review the final determinations of a state court in judicial proceedings.'" *Gruntz v. County of Los Angeles*, 202 F.3d 1074, 1078 (9th Cir. 2000) (en banc) (quoting *Worldwide Church of God v. McNair*, 805 F.2d 888, 890 (9th Cir.1986)). Although habeas actions are an exception to this rule, this Court would not have jurisdiction to hear Lout's requests, even if his documents could properly be construed as a petition for writ of habeas corpus.

Lout has already filed a petition for writ of habeas corpus in this Court and it was denied for lack of merit. *See Lout v. State of Montana, Cause No. CV 05-67-M-DWM-LBE (D. Mont. judgment filed Aug. 4, 2006)*. Both this Court and the Ninth Circuit Court of Appeals denied his request for a certificate of appealability. *See Order at 3-5, Lout, No. CV 05-67-M; Order at 1, Lout v. Montana, No. 06-*

35843 (9th Cir. June 1, 2007). Consequently, Lout may proceed only under the provisions of 28 U.S.C. § 2244(b). Lout has not obtained leave to file a second petition. This Court lacks jurisdiction. *See Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam). Therefore, there is no need to recharacterize the filing as a habeas petition.


Accordingly, **IT IS HEREBY ORDERED** that Lout's Petition (*Doc. 1*) is **DISMISSED WITH PREJUDICE**. Lout's motion to proceed in forma pauperis (*Doc. 2*) is **DENIED**.

Further, this Court **CERTIFIES** that, pursuant to F.R.App.P. 24(a)(4)(B), any appeal from disposition would not be taken in good faith.

Finally, Petitioner's Motion for Confirmation and Answer to Petitioner's Objections and Request for Hearing (*Doc. 7*) is **DENIED AS MOOT**.

The Clerk of Court is directed to enter a judgment of dismissal and notify the parties of the making of this Order.

DATED this 24<sup>th</sup> day of April, 2009.

  
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RICHARD F. CEBULL  
UNITED STATES DISTRICT JUDGE